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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,595	02/08/2002	Douglas H. Massey	053142-9004-01	2722

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EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/071,595

Applicant(s)

MASSEY ET AL.

Examiner

Alexandra K Pechhold

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 12-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,8-10 is/are rejected.
- 7) ☒ Claim(s) 3,4,6,7 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Restriction Requirement***

1. Applicant argues that the restriction requirement should not have been made since it does not cause an undue burden on the Examiner to search the different inventions, particularly with the advantage of computerized text searching. The Examiner maintains the restriction, therefore examining only elected claims 1-11, since the different inventions involve combinations and subcombinations and a method which have different components and different structure, which requires additional searching. Simply because Examiner's are aided by computerized text searching tools does not mean that restriction requirements are no longer necessary. The claims were properly grouped according to the restriction requirements, and therefore the Examiner is now only examining claims 1-11.

### ***Claim Objections***

2. Claim 9 is objected to because of the following informalities: the applicant recites "the first position" and "the second position" when neither of these positions was previously set forth, making the claim confusing. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**4. Claims 1, 2, 5, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Springer et al (US 5,311,628).**

Regarding claim 1, Springer discloses a dock leveler comprising:

- a ramp, seen as ramp (11), adapted to be rotatably coupled to the loading dock (Col 3, lines 49-52),
- a guard coupled to the ramp, seen as barrier member (16), the guard being rotatable between a raised position that forms a barrier and a lower position (see Figs. 3 and 4),
- a biasing member coupled to the guard, seen as hydraulic cylinder (27), wherein the biasing member biases the guard toward the raised position when the guard is in the raised position, and wherein the biasing member biases the guard toward the lowered position when the guard is in the lowered position (see Col 4, lines 55-68).

Regarding claim 2, Springer discloses in column 4, lines 64-68 that the barrier member may be actuated by means other than a piston and hydraulic cylinder, such as a cable assisted by springs.

Regarding claim 5, Springer illustrates a linkage between the biasing member and the guard, seen as arm (23) in Figs. 3 and 4.

Regarding claim 9, Springer illustrates a linkage, seen as arm (23) in Figs. 3 and 4, which raises the barrier member (16) from the lowered position to the raised position, as the figures illustrate.

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Regarding claim 10, Springer discloses in column 4, lines 56-68 that the barrier member (16) may be actuated by mechanical means, and that it may be moved independently.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Springer et al (US 5,311,628) as applied to claim 1 above, and further in view of DiSieno et al (US 6,163,913).** Springer fails to disclose a damper coupled to the guard, wherein the damper slows the downward motion of the guard. DiSieno teaches a dock leveler having a hydraulic motion damper (92) for damping the movement of the ramp (40) about the hinge (39) in a clockwise direction, viewing Fig. 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the dock leveler of Springer to include a damper coupled to the guard, as taught by DiSieno, since DiSieno states in column 5, lines 58-61 that a damper helps to dampen the movement of the ramp about the hinge.

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***Allowable Subject Matter***

7. Claims 3, 4, 6, 7, and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

  
**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group 3600**

AKP  
1/28/04